

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 234—MAJOR SYSTEM ACQUISITION

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AUTHORITY: 41 U.S.C. 1303 and 48 CFR chapter 1..

234.001 Definitions.

As used in this subpart—

Acceptable earned value management system and *earned value management system* are defined in the clause at 252.234-7002, Earned Value Management System.

Production of major defense acquisition program means the production and deployment of a major system that is intended to achieve an operational capability that satisfies mission needs, or an activity otherwise defined as Milestone C under Department of Defense Instruction 5000.02 or related authorities.

Significant deficiency is defined in the clause at 252.234-7002, Earned Value Management System, and is synonymous with *noncompliance*.

[76 FR 28867, May 18, 2011, as amended at 79 FR 4632, Jan. 29, 2014]

234.003 Responsibilities.

DoDD 5000.01, The Defense Acquisition System, and DoDI 5000.02, Operation of the Defense Acquisition System, contain the DoD implementation of OMB Circular A-109 and OMB Circular A-11.

[70 FR 14575, Mar. 23, 2005, as amended at 76 FR 76320, Dec. 7, 2011]

234.004 Acquisition strategy.

(1) See 209.570 for policy applicable to acquisition strategies that consider the use of lead system integrators.

(2) *Contract type*.

(i) In accordance with section 818 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364), for major defense acquisition programs at Milestone B—

(A) The Milestone Decision Authority shall select, with the advice of the contracting officer, the contract type for a development program at the time of Milestone B approval or, in the case of a space program, Key Decision Point B approval;

(B) The basis for the contract type selection shall be documented in the acquisition strategy. The documentation—

(1) Shall include an explanation of the level of program risk; and

(2) If program risk is determined to be high, shall outline the steps taken to reduce program risk and the reasons for proceeding with Milestone B approval despite the high level of program risk; and

(C) If a cost-reimbursement type contract is selected, the contract file shall include the Milestone Decision Authority's written determination that—

(1) The program is so complex and technically challenging that it would not be practicable to reduce program risk to a level that would permit the use of a fixed-price type contract; and

(2) The complexity and technical challenge of the program is not the result of a failure to meet the requirements of 10 U.S.C. 2366a.

(ii) In accordance with section 811 of the National Defense Authorization

Act for Fiscal Year 2013 (Pub. L. 112-239), for contracts entered into on or after October 1, 2014, the contracting officer shall—

(A) Not use cost-reimbursement line items for the acquisition of production of major defense acquisition programs, unless USD(AT&L) submits to the congressional defense committees—

(1) A written certification that the particular cost-reimbursement line items are needed to provide a required capability in a timely and cost effective manner; and

(2) An explanation of the steps taken to ensure that cost-reimbursement line items are used only when to achieve the purposes of the exception; and

(B) Include a copy of such congressional certification in the contract file.

[73 FR 4118, Jan. 24, 2008, as amended at 79 FR 4632, Jan. 29, 2014; 79 FR 23278, Apr. 28, 2014; 79 FR 58694, Sept. 30, 2014]

234.005 General requirements.

234.005-1 Competition.

(1) A contract that is initially awarded from the competitive selection of a proposal resulting from a general solicitation may contain a contract line item or contract option for the provision of advanced component development or prototype of technology developed under the contract or the delivery of initial or additional prototype items if the item or a prototype thereof is created as the result of work performed under the contract only when it adheres to the following limitations:

(i) The contract line item or contract option shall be limited to the minimal amount of initial or additional prototype items that will allow for timely competitive solicitation and award of a follow-on development or production contract for those items.

(ii) The term of the contract line item or contract option shall be for not more than 12 months.

(iii) The dollar value of the work to be performed pursuant to the contract line item or contract option shall not exceed the lesser of—

(A) The amount that is three times the dollar value of the work previously performed under the contract; or

(B) \$20 million.

(2) A contract line item or contract option may not be exercised under this authority after September 30, 2014.

[75 FR 32639, June 8, 2010]

Subpart 234.2—Earned Value Management System

SOURCE: 73 FR 21848, Apr. 23, 2008, unless otherwise noted.

234.201 Policy.

(1) DoD applies the earned value management system requirement as follows:

(i) For cost or incentive contracts and subcontracts valued at \$20,000,000 or more, the earned value management system shall comply with the guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748).

(ii) For cost or incentive contracts and subcontracts valued at \$50,000,000 or more, the contractor shall have an earned value management system that has been determined by the cognizant Federal agency to be in compliance with the guidelines in ANSI/EIA-748.

(iii) For cost or incentive contracts and subcontracts valued at less than \$20,000,000—

(A) The application of earned value management is optional and is a risk-based decision;

(B) A decision to apply earned value management shall be documented in the contract file; and

(C) Follow the procedures at PGI 234.201(1)(iii) for conducting a cost-benefit analysis.

(iv) For firm-fixed-price contracts and subcontracts of any dollar value—

(A) The application of earned value management is discouraged; and

(B) Follow the procedures at PGI 234.201(1)(iv) for obtaining a waiver before applying earned value management.

(2) When an offeror proposes a plan for compliance with the earned value management system guidelines in ANSI/EIA-748, follow the review procedures at PGI 234.201(2).